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BUMBO (PTY) LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WENDY D. WHITSON, etc., et al.,
Plaintiff,
vs.
BUMBO, et al.,
Defendants.

Case No. CV-07-5597 CW

DECLARATION OF JENNIFER J.
JOHNSTON IN SUPPORT OF
BUMBO (PTY) LTD.'S MOTION
TO SET ASIDE DEFAULT, QUASH
SERVICE, DISMISS FOR
IMPROPER SERVICE, LACK OF
PERSONAL JURISDICTION AND
FAILURE TO SERVE, AND FOR
SANCTIONS

Date: February 14, 2008
Time: 2:00 p.m.
Place: Courtroom of the Hon.
Claudia Wilken

I, Jennifer J. Johnston, declare:

1. I am a member of the law firm of Condon & Forsyth LLP, attorneys of record for defendant Bumbo (Pty) Ltd. ("Bumbo-Pty"). I have personal knowledge of the facts stated in this declaration, except for those facts stated upon information and belief and, as to those factors, I am informed and believe that they are true and correct. If called as a witness, I could competently testify to these facts. I submit this declaration in support of Bumbo-Pty's Motion to Set Aside Default, Quash Service, Dismiss for Improper Service, Lack of Personal

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1 Jurisdiction and Failure to Serve, and For Sanctions.

2 2. I am informed and believe that in November 2007, Bumbo-Pty
3 learned through co-defendant, Target Corporation ("Target"), that this lawsuit had
4 been filed.

5 3. I am informed and believe that Bumbo-Pty had no information that it
6 had been served, but it learned through Target that Donald S. Edgar, plaintiff's
7 attorney, was claiming that he had served "Bumbo."

8 4. Bumbo-Pty initially retained the law firm of Condon and Forsyth LLP
9 ("C&F") to monitor the docket and ensure that default would not be taken.

10 5. Bumbo-Pty also requested C&F to contact plaintiff's attorney and
11 request information about the purported service.

12 6. On November 19, 2007, I sent a letter to plaintiff's counsel requesting
13 information regarding service of the summons and complaint. I further requested
14 that counsel advise C&F before a default was requested. A true and correct copy
15 of this letter is attached hereto as Exhibit "A."

16 7. I received a letter from plaintiff's counsel, Donald S. Edgar ("Edgar")
17 dated November 21, 2007. Edgar refused to provide me with any information
18 regarding service or to "enter into any agreements" with C&F regarding the
19 decision to seek default. A true and correct copy of this letter is attached hereto as
20 Exhibit "B."

21 8. I then sent another letter to plaintiff's counsel on November 21, 2007,
22 advising that C&F had no record of any service made on Bumbo-Pty and further
23 requesting counsel provide information and "refrain from any attempts to take a
24 default judgment against Bumbo." No response was received. A true and correct
25 copy of this letter is attached hereto as Exhibit "C."

26 9. C&F learned that plaintiff filed a proof of service on December 11,
27

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2007, claiming that she effected service on "Bumbo" by serving "Dione Buchanan" as "owner" in Conroe, Texas. C&F attempted to obtain information about the purported service and learned that the summons and complaint were delivered to Wartburg Enterprises, Inc. ("Wartburg"), a Texas distributor of the Baby Sitter.

10. On December 19, 2007, C&F was retained to defend Bumbo-Pty in this matter and to respond to the purported attempt at service. C&F attempted to contact personnel at Bumbo-Pty and learned that the plant had shut down for the last two weeks of the year for the holidays.

11. On December 20, 2007 (one court day before Christmas), plaintiff filed a request to enter default against "Bumbo." C&F learned about the filing of the request on December 21, 2007, by monitoring the docket. Plaintiff, at no time, attempted to contact C&F before filing the request to enter default.

12. C&F did not even receive a courtesy copy of the filing of the request.

13. Upon information and belief, the address that was served by plaintiff appears to belong to a facility owned by Wartburg. Wartburg acts as a distributor for the "Baby Sitter" but is a separate company incorporated in Florida and not an agent for service of process for defendant. A true and correct copy of Wartburg's Articles of Incorporation is attached hereto as Exhibit "D."

14. On December 21, 2007, I sent a *third* letter to plaintiff's counsel advising them that they had, in fact, not served Bumbo-Pty and requesting that they withdraw their Request to Enter Default. Again, C&F received no response to this letter. A true and correct copy of this letter is attached hereto as Exhibit "E."

15. From December 21-24, 2007, C&F drafted a motion to dismiss plaintiff's action for insufficiency of service of process and lack of personal jurisdiction. I forwarded declarations to support the motion to representatives of

1 Bumbo-Pty for signature. Due to the holidays and the closing of the plant, there
2 has been a delay in obtaining the signed declarations.

3 16. On December 27, 2007, C&F learned from Target's counsel that a
4 default had been entered against "Bumbo." On December 28, 2007, C&F filed this
5 motion on behalf of Bumbo-Pty.

6 17. As of the date of this motion, I have still not received any
7 communication from plaintiff's counsel regarding any service issue, other than the
8 above-referenced letter of November 21, 2007.

9 18. Attached hereto as Exhibit "F" is a true and correct copy of Gerhard
10 Wagenaar's ("Wagenaar") unsigned Declaration. Wagenaar is Financial Director
11 for Bumbo-Pty. The declaration has been forwarded to Wagenaar for signature.
12 Due to the holidays, there has been a delay in return of said declaration. I will file
13 the signed declaration as soon as I am in receipt of such. I am informed and
14 believe that the declaration is true and correct as prepared.

15 19. I have spent 10 hours of time in attempting to set aside the default in
16 this action. This includes my time in preparation of the declarations, review of the
17 Motion and Memorandum of Points and Authorities in Support Thereof,
18 communications with my client, and communications with plaintiff's counsel. My
19 hourly rate is \$375.

20 20. Most of the preparation of the Motion and Memorandum of Points
21 and Authorities was completed by Lisa M. Pierce, Esq. ("Pierce"). Pierce spent
22 41.2 hours on the preparation of this Motion. Pierce's hourly rate is \$185.

23 21. Jessica Viker is a paralegal at C&F ("Viker"). Viker has spent 5
24 hours in monitoring the court's docket daily as well as in communications with
25 plaintiff's counsel. Viker's hourly rate is \$110.

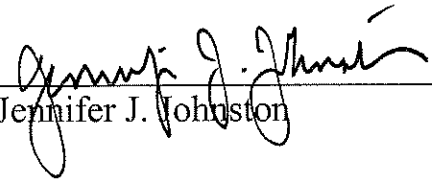
26 22. The total fees expended thus far in C&F's attempt to set aside the
27

1 default are \$11,922. Bumbo-Pty is requesting this amount in sanctions against
2 Wendy D. Whitson, Donald S. Edgar, Jeremy R. Fietz, and Rex Grady.

3 23. I anticipate that myself, Pierce and Viker will spend additional time in
4 responding to any opposition papers received, preparing for the hearing in this
5 matter and traveling to said hearing. C&F reserves the right to submit further
6 declarations concerning additional expenses incurred.

7 I declare under penalty of perjury that the foregoing is true and correct.

8 Executed this 28th day of December, 2007 at Los Angeles, California.

9
10 
11 Jennifer J. Johnston

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